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Nos. 82-1860 and 82-1862

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SCHNEIDER MOVING & STORAGE COMPANY,

and

PROSSER'S MOVING AND STORAGE COMPANY,
Petitioners,

v.

LORAN W. ROBBINS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), a federation of 95 national and international labor unions with a total membership of approximately 13,500,000 working men and women, files this brief *amicus curiae* with the consent of the parties as provided for in this Court's rules.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents in these cases are trustees of joint labor-management pension and health and welfare trusts; their "powers and duties" are set forth in the trust agreements

establishing these trusts. JA 14-33. Those agreements grant the trustees "the power to demand and collect the contributions of the Employers to the Fund" and to demand and be provided by the Employers such "information as the Trustees may reasonably require in connection with the administration of the Trust." JA 22-23. And, the trust agreements expressly empower the trustees to "institut[e] and prosecut[e] . . . and interven[e] in . . . any legal proceedings as the Trustees in their discretion deem in the best interest of the Fund to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund." JA 22. The trust agreements do not condition in any respect this power of the trustees to bring suit, nor do the agreements subordinate the powers of the trustees to any powers of the unions or the employers that established the trusts.

The instant lawsuits were brought by the trustees pursuant to these express powers. Yet petitioners in these cases contend that the trustees may not bring such suits. Rather, say petitioners, because the duties owed by the employers here to the trust funds—duties which are stated twice, once in the applicable collective agreements and again in the trust agreements [1]—are defined by reference to provisions in the collective agreements, and turn upon the meaning of those provisions, the trustees are bound by the consensual grievance-arbitration process established by the union and employer in the collective agreements for resolving disputes between the employer and the union over the meaning of those agreements. Petitioners' argument reduces to the contention that the trustees, who have no independent access to those consensual processes, are dependent upon the union for enforcement of the employers' obligations to the trust.

We do not address in our argument whether the result urged by petitioners is permissible in the face of Congress'

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[1] JA 21 (trust agreements); JA 76, 77-78 (collective agreements).

insistence that benefit trust funds be administered by trustees who are not subordinate to either employer or union but rather are obliged single-mindedly to protect and advance the interests of the trust participants and beneficiaries. See *NLRB* v. *Amax Coal Co.*, 453 U.S. 322 (1981). For, in any event, that result would follow only if it were the result intended by the parties establishing the trust, or if it were the result required by law regardless of the parties' intent. And, as we show in our argument, the materials convincingly demonstrate that the parties here intended to empower the trustees to sue for collection and did not intend to make the trustees' ability to seek collection be dependent upon the union's willingness to invoke arbitration. We show further that, contrary to petitioners' contentions, neither the national labor policy nor third-party-beneficiary doctrine imposes upon the parties an obligation to arbitrate matters that the parties had decided not to submit to the arbitration process.

ARGUMENT

We assume—although the matter is not free from doubt—that consistent with § 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5), and with ERISA, 29 U.S.C. §§ 1102-04, 1132(g)(2), 1145, employers and unions, in establishing pension and health and welfare trusts, *could* provide for the result urged here by petitioners: that, in a collection case turning on the meaning of a term in the collective agreement, the trustees cannot sue in court but must depend, so long as the union does not violate the duty of fair representation, on the union's willingness to take the case to arbitration. On that hypothesis, the first question to be asked in this case is whether *these* parties intended to condition in this manner the trustees' right to bring collection actions.

Petitioners contend that this question should be answered in the affirmative, invoking the presumption in favor of arbitrability enunciated by this Court in *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 582-583

(1960): where a collective agreement contains a broad arbitration clause, arbitration of grievances involving the meaning and/or application of the agreement "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Again, so that we meet petitioners on their chosen ground, we assume that the national labor policy which prompted that presumption is operative here, although as we explain in the margin that is a debatable question.[2]

The proper starting point for evaluating petitioners' contention is that the presumption in favor of arbitration is *only* a presumption: "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Warrior & Gulf*, 363 U.S. at 582. National labor policy is effectuated "only if the means *chosen* by the parties for settlement" of disputes "is given full play." *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564,

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[2] This Court viewed the presumption in favor of arbitratability as necessary "to be consistent with congressional policy [expressed in § 203(d) of the LMRA, 29 U.S.C. § 173(d)] in favor of settlement of disputes *by the parties* through the machinery of arbitration." *Warrior & Gulf*, 363 U.S. at 582 (emphasis added). The "declaration of purpose and policy" that introduces § 203(d), contained in § 201(c), 29 U.S.C. § 171(c), explains:

> [C]ertain controversies which arise *between parties to collective bargaining agreements* may be avoided or minimized by . . . inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies. [Emphasis added.]

This Court has never held, or even suggested, that where a party to a dispute is neither the employer, an employee nor the union, there is a national labor policy that favors arbitration of that dispute simply because the dispute turns upon the interpretation of a provision in a collective agreement. See also *supra*, p. 3.

566 (emphasis added). The controlling principles are stated in *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 218-219 (1979):

> In the 1947 Taft Hartley Act [which added §§ 203 (d) and 301] Congress sought to promote numerous policies. One policy of particular importance—if not the overriding one—was the policy of free collective bargaining. . . . It follows that the parties' agreement primarily determines their relationship. *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) (though policy in favor of arbitration may color interpretation of contract, it cannot impose an agreement to arbitrate where the parties have agreed not to arbitrate). See *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 570 (1960) (Brennan, J., concurring). If the parties' agreement specifically resolves a particular issue, the courts cannot substitute a different resolution.

In the instant case, the parties "specifically resolve[d]" the issue of how the trustees were to enforce employer obligations to contribute to trust funds: the decision whether to pursue collection was committed to the trustees' discretion (and not subordinated to the union's willingness to invoke arbitration), with the means for pursuing collection to be a "legal proceeding" initiated by the trustees. Unlike in *Warrior & Gulf*, the parties here did *not* intend that the dispute be arbitrated.

1. In these cases, the trust agreements, not the collective agreements, are the documents which set forth the powers and duties of the trustees. The trust agreements, which establish and define the respective trusts, are not simply appendages of the collective agreements. To begin with, the parties to the trust agreements are different from the parties to the collective agreements. The parties to the collective agreements are simply the local union, Local 610 of the Teamsters, and the employer, petitioner Schneider Moving in one case and petitioner Prosser's Moving in the other. JA 51; Schneider Pet.

App. A-44. The parties to the trust agreements are: the Central and Southern Conferences of the Teamsters and their affiliated local unions; numerous employer associations on behalf of themselves and their members; numerous other unaffiliated employers; and the individual trustees "accepting the Trust obligations herein declared." JA 14-15. Each of the unions and each of the employers who is party to the trust has an interest in the trust being able to collect the appropriate amount of contributions from each of the employers involved. *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 469 (1960). The mechanisms established in the trust agreement for collection of such contributions are the manifestation of those broad collective interests and not simply a reflection of the individual intentions of parties to a particular collective bargaining agreement.

In this context, it is not surprising that the trust agreements do not in any way subordinate the power of the trustees to protect the interests of the trust to determinations of particular local unions or particular employers. Rather, in meticulous detail the trust agreements invest the trustees with independent power to enforce the obligations of each involved employer to the trust. The trust agreements provide for the designation of trustees who shall "control and manage the operation and administration of the Trust[s]." JA 23. Those agreements declare that the trustees will "receive and hold the contributions and any other money or property which may come into their hands as Trustees . . . with the powers and duties, uses, and purposes" set forth in the trust agreements. JA 15-16. The trust agreements empower the trustees, *inter alia*, to "hold, manage, care for, and protect the Trust Fund and *collect* the income therefrom and *contributions thereto*, except to the extent that any of these functions or responsibilities are assigned to another entity or entities pursuant to any provision of this Article." JA 24, emphasis added. "This Article" is Article IV of the trust agreement, captioned "Powers and Duties of Trustees."

The trust agreements define the employers' obligations to the trusts and to the trustees as well. The agreements provide that "[e]ach Employer shall make continuing and prompt payments to the Trust Fund" in the amounts specified in the collective agreement entered into by that employer. JA 21; see *id.*, 15. And each employer must "promptly furnish to the Trustees, upon reasonable demand [such] information as the Trustees may reasonably require in connection with the administration of the Trust." JA 22-23. The trustees are also authorized to "examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust[s]." JA 23.

Of central importance here, the trust agreements expressly establish the trustees' right and obligation to enforce the employers' commitments to the trusts: "The Trustees . . . shall have the power to demand and collect the contributions of the Employers to the Fund." JA 22. And the trust agreements confer on the trustees the responsibility to take steps "to effectuate the collection or preservation of contributions," commit to the trustees' discretion the determination of what steps to take, and authorize the trustees to institute *any* legal proceeding that the trustees deem necessary to discharge this responsibility (JA 22) (emphasis added):

> Said Board of Trustees shall take such steps, including the *institution and prosecution of*, and intervention in, *any legal proceedings* as the *Trustees in their discretion deem in the best interest of the Fund* to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund. . . .[3]

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[3] The trustees' authority to take action "to effectuate the collection or preservation of contributions" is "without prejudice . . . to the rights of the Union to take whatever steps which may be deemed necessary for such purpose." JA 22. This proviso makes clear that

This provision does not in any respect condition or qualify the power of the trustees to bring suit. Certainly, nothing in the trust agreements—the only documents that define the power and duties of the trustees—requires the trustees to submit claims against the employer to arbitration, either directly or by requesting the union to prosecute such claims.

2. It is doubtful that the parties to the collective agreements in these cases—the local union and each of the two petitioners here—could by their agreement negate the powers conferred upon the trustees by the broader group of employers and union that collectively constitute the parties to the trust agreements. But that question is not posed here, because the terms of the collective agreements in these cases do not purport to channel claims by the trustees into the grievance-arbitration process established by those agreements.

a. The collective agreements make provision for resolving "differences . . . between the Company and the Union or any employee of the Company as to the meaning or application of the provisions of this agreement." JA 55; Schneider Pet. App. A-51. Only *such* "differences" are subject to the grievance-arbitration procedures established in the collective agreements, not differences between the trustees and the employer. Moreover, by the terms of the collective agreements, only "the Company or the Union" in the case of Prosser's Moving (JA 56) and only "the Union" in the case of Schneider Moving (Schneider Pet. App. A-52) may invoke arbitration. Cf. *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 243 (1962).

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the rights of the trustees established in the trust agreements are not in derogation of whatever rights the union may have under the collective agreements. If the employer has refused to contribute to the trust fund in violation of the collective agreement between the union and employer, the union retains the right under this proviso to pursue its own contractual remedies against the employer, should the union choose to do so.

Petitioners *concede* that the trustees are *not* empowered by the collective agreements to invoke arbitration themselves. Brief for Schneider Moving at 17-19; Brief for Prosser's Moving at 18. Thus, petitioners are driven to contending that the parties to the collective agreements intended that the union would act as the trustees' surrogate in the arbitration process—at least where the trustees' claim turns on the interpretation of a term of the collective agreement.[4] But there is not a word in the collective agreements to support that result. The parties to the collective agreements in these cases knew that the trustees were empowered by the trust agreements to bring collection cases. That being so, if these parties meant such cases to be processed through the contract arbitration procedure, they, in all likelihood, would have provided for that result explicitly. (Indeed, if that were their intention, they likely would have provided for direct access by the trustees to the arbitration process, rather than making the trustees dependent on the union's willingness to process trustee claims through arbitration.)

The fact that the collective agreements do not contain a word that supports petitioners' hypothesis requires rejection of their contention. It is one thing to presume that the parties intended the union to channel *its own* contractual disputes to arbitration. It is quite another to presume that, in the face of the trust agreements' investiture of the trustees with broad powers to act inde-

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[4] Petitioners try to confine their argument that claims by the trustees must be arbitrated only to a subset of collection claims—those in which there is a dispute over the meaning of the collective agreement. But *Warrior & Gulf's* presumption of arbitrability, on which petitioners rely, would, if applicable, not permit the line to be drawn at that point. As the collective agreement provides for arbitration of all disputes over the "meaning *or application*" of the agreement (JA 55, emphasis added), the logic of petitioners' contention would lead to the result that trustees could not pursue *any* collection claims in court, but instead would in *every* instance have to rely upon the union to process the collection claim through arbitration.

pendently of the employers and unions, the parties to the collective agreements meant (without anywhere saying so) to condition the trustees' ability to exercise those powers upon the union's acquiescence.

b. Petitioners deny that under their theory the trustees would be dependent upon the union. They argue that the parties intended that the union's duty of fair representation would provide the assurance that the trustees' meritorious claims would be pressed by the union to arbitration. But the union's duty of fair representation by its very nature could not provide any such assurance. Even if trustees could prosecute fair representation lawsuits against unions—and the source of their right to do so is nowhere explained by petitioners, who simply declare the existence of such a cause of action as an *ipse dixit*—the duty itself would not assure that all claims thought meritorious by the trustees would be pursued to arbitration.

First, the duty of fair representation is imposed on unions to compensate for "extinguish[ing] the individual employee's power to order his own relations with his employer" and "vest[ing in] unions [the] power to order the relations of employees with their employer." *NLRB* v. *Allis-Chalmers*, 388 U.S. 175, 180-181 (1967). The extent of the duty is therefore defined by the "scope" of the union's "authority . . . as exclusive bargaining agent." *Humphrey* v. *Moore*, 375 U.S. 335, 342 (1964). Thus, at the threshold, the duty would have no application in the context posed by petitioner's argument. The union is not the "agent"—much less the "exclusive" agent—of the trustees. The trustees are not members of the unit represented by the union, and indeed have independent representative duties of their own vis-a-vis the beneficiaries of the trust. *Amax Coal Co., supra.*[6]

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[6] Moreover, many of the beneficiaries of the trust are not represented by the union. The union, for example, does not represent retirees. "Retirees [can]not properly be joined with the active em-

Second, even if the duty applied, the union would remain free, consistent with its obligation fairly to represent bargaining unit members, to decline to take a claim to arbitration for a myriad of legitimate reasons unrelated to the merit of the claim. The union has "exclusive control over the manner and extent to which an individual grievance is presented." *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 58, n. 19 (1974). See also *Vaca* v. *Sipes*, 386 U.S. 171 (1967); *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965). In performing that role, the primary objective is to further what the union deems to be the collective interests of the members of the bargaining unit. Even where an arbitrable claim is meritorious, a "union might, without breaching its duty of fair representation, reasonably and in good faith decide not to support the claim vigorously in arbitration." *Barrentine* v. *Arkansas-Best Freight System*, 450 U.S. 728, 742 (1981). For "a union's objective is to maximize overall compensation of its members," and a union is therefore entitled to sacrifice particular elements of the compensation package "if an alternative expenditure of resources would result in increased benefits for workers in the bargaining unit as a whole." *Id.* at 742. Further, as the court below observed, a union may consistent with its duty of fair representation determine not to press a grievance in order to avoid the cost of an arbitration proceeding, to maintain harmonious relations with the employer or to obtain concessions from the employer on other disputes. *Robbins* v. *Prosser's Moving & Storage Co.*, 700 F.2d 434, 442 (8th

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ployees in the unit that [a] Union represents," and "[s]ince retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer." *Chemical Workers* v. *Pittsburgh Glass*, 404 U.S. 157, 172, 181 n.20 (1971). Likewise, the union does not in most instances represent the persons who have been designated by employees as beneficiaries under the terms of the health and welfare plans. Thus, if a claim pertains to the interests of plan beneficiaries whom the union does not represent, the union would owe no duty of fair representation to either the trustees or the beneficiaries.

Cir. 1983). See also *Vaca* v. *Sipes*, 386 U.S. 171, 192 (1967); *Humphrey* v. *Moore*, 375 U.S. 335, 349 (1964).

Third, the union is entitled to make a good faith judgment, albeit a different judgment from that of the trustees, that a particular claim lacks merit and should not be pressed to arbitration for *that* reason. *Vaca* v. *Sipes*, *supra*, 386 U.S. at 191-193. If the union in good faith disagrees with the trustees as to the merit of a particular contention, the union would violate no duty by refusing for that reason to process the claim, even if a court might ultimately determine that the trustees' contention *is* meritorious.[6]

Thus, a union presented with a request by trustees to arbitrate a claim is not obliged to do so or face liability for breach of its duty of fair representation. And if, in

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[6] The *amici curiae* Merchants and Manufacturers Association and Rozay's Transfer maintain that requiring the trustees to request the union to arbitrate a claim is beneficial because it affords the union the opportunity to weed out frivolous trustees' claims. The *amici* hypothesize a case where the language of the collective agreement is ambiguous, "but the parties' statements during the negotiations clearly reflect [their] understanding." Merchant's Brief, at 16-17. "If . . . the decision below stands," the *amici* argue, "then the trustees in the hypothetical case would have no reason to pursue the matter with the union." *Id.*, at 17. But that argument—even apart from its subordination of the trustees to the union—assumes that the trustees would bring suit without making any investigation as to the underlying facts or as to the chances of the suit being successful. As a practical matter, the trustees *will* in all likelihood confer with the union and the employer in advance of bringing a suit, in order to determine whether evidence of the parties' intentions in fact exists. If such evidence establishes that the employer's interpretation is correct, the trustees would understand that to sue seeking a contrary interpretation would be futile: the evidence adduced at trial would result in judgment against them. Of course, in the typical case dispositive evidence of the parties' intentions will not exist. As we have shown, the trust agreements confer authority on the trustees in such circumstances to decide what, if any, action should be taken to serve the best interests of the fund; those agreements do not subordinate the trustees' judgment on the merits to that of the union.

the exercise of its permissible discretion, the union opts not to arbitrate the claim, under petitioners' proposal the trustees would be stymied in their efforts to "effectuate the collection or preservation of contributions or other amounts which may be owed the Trust Fund." JA 22.[7] In sum, it cannot seriously be contended that these parties *intended* to make the trustees dependent upon the union for enforcement of the employers' obligations to the trust funds.

4. Petitioners seek to avoid the result intended by the parties by suggesting that the opposite result is mandated by operation of law. They point to two purported sources of such a mandate, neither of which bears analysis.

a. Petitioners contend that the national labor policy in favor of arbitration requires that the trustees' claims be arbitrated, even if the parties intended otherwise. But as we showed earlier, this Court has squarely held that the "policy in favor of arbitration . . . cannot impose an agreement to arbitrate where the parties have agreed not to arbitrate." *Carbon Fuel* v. *Mine Workers*, 444 U.S. at 219; see p. 5, *supra*.

b. Petitioners contend that the result they urge is required because the trustees are third-party beneficiaries and thus are bound by whatever procedural requirements would confront the union if *it* sought to compel contribution. But if we are right that these parties did not *intend* the result urged by petitioners, petitioners cannot

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[7] Prosser Moving maintains that "[e]ven in the event the Trustees are unsuccessful in compelling the Union to prosecute these arbitral disputes, the Trustees shall have acted with due care, skill, prudence and diligence [and] could not be held liable for failing to fulfill their fiduciary duties." Prosser's Brief, at 37. The issue here, however, is not whether the procedure proposed by the employers will insulate the trustees from liability, but whether the trust documents subordinate the authority of the trustees to the union in this manner and thus take from the trustees the discretion to act in what *they* perceive to be the best interests of the fund beneficiaries and participants.

salvage their position by attempting to pin the label "third-party beneficiaries" upon the trustees. Even if the label were accurate,[8] the conclusion petitioners would draw—that the trustees are subject to the defense of failure to arbitrate that would be available were the union suing to compel collection—would not follow.

Third-party beneficiary doctrine is not a device to defeat the intent of the parties. Parties may "agree that the beneficiary will have an enforceable right despite any defenses which the promisor might have against the promisee." Calamari & Perillo, *Contracts* (2d Ed. 1977), § 17-8, at 624. See also, 4 Corbin on Contracts (1951), § 776 at 14, § 777 at 27; Restatement of Contracts, Second (1979), § 309, comment b. In the trust agreements here the parties have spelled out a role for the trustees that is different and independent from the role of the union. Indeed, such independence is the very reason for having pension and health and welfare funds administered by trustees. The parties in the trust agreements have expressly authorized the trustees to sue for contribution, and have not conditioned that authorization upon prior trustee success in persuading the union to resort to arbitration. These parties thus contemplated a procedure for trustee enforcement of contribution promises that would not afford employers a defense that the trustees had not resorted to arbitration. And that is dispositive, for, as the treatises cited above reflect, third-party beneficiary concepts are not intended to impose on

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[8] The commitments sued upon here are contained separately in the trust agreements and the collective bargaining agreements. The appropriate label to describe the trustees' role in suing on either the trust agreements or the collective agreements is by no means clear. The trustees have been established as an independent enforcement agency, not as incidental beneficiaries of the agreement. As this Court has recognized, the relationship of benefit fund trustees to a collective agreement "is not a typical third-party beneficiary" relationship. *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 469 (1960).

contracting parties a result different from the result the parties intended.

CONCLUSION

For the reasons stated herein, the decision below should be affirmed.

Respectfully submitted,

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